Filed 6/21/10 Homeowners Assn. of Meadowbrook v. Equity Lifstyles Prop. CA1/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

HOMEOWNERS ASSOCIATION OF MEADOWBROOK ESTATES, INC., et al., Plaintiffs and Appellants, v. EQUITY LIFESTYLE PROPERTIES, INC., et al., Defendants and Respondents.	D054728 (Super. Ct. No. GIE020887)

APPEAL from a judgment of the Superior Court of San Diego County, Eddie C. Sturgeon, Judge. Reversed.

Homeowners Association of Meadowbrook Estates, Inc., James Montague and Phil LeFeuvre (collectively Homeowners) appeal the judgment against them in their class action lawsuit against the owners and operators of the Meadowbrook Mobile Estates mobilehome park (the Park) in Santee, California. Homeowners' lawsuit alleged that the

applicable mobilehome rent control ordinances prohibited certain charges that the owners of the Park imposed on them beginning in January 2004.

According to Homeowners, the trial court erred in (1) granting judgment on the pleadings on the operative second amended complaint on the ground that the controversy was moot; (2) granting judgment on the pleadings, without leave to amend, on the cause of action for violation of the Mobilehome Residency Law (the MRL) (Civ. Code,[1] § 798 et seq.) as pled in the first amended complaint; and (3) striking Homeowners' prayer for punitive damages from the first amended complaint.

As we will explain, we conclude that the trial court erred in granting judgment on the pleadings on the ground that the second amended complaint was moot. However, the trial court did not err in ruling on the cause of action alleging violations of the MRL or in striking the prayer for punitive damages.

I

FACTUAL AND PROCEDURAL BACKGROUND

This lawsuit was brought by (1) Montague and LeFeuvre, who are residents of the Park,[2] and (2) Homeowners Association of Meadowbrook Estates, which is a not-for-profit association representing the Park's homeowners and residents.[3] According to the

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1 All further statutory references are to the Civil Code unless otherwise specified.

2 Originally, Jerry Dunnam was a plaintiff, but LeFeuvre replaced him as plaintiff in the first amended complaint.

3 According to Homeowners, the Park is a "senior park" with senior citizens as residents.

operative pleading, defendants Equity LifeStyle Properties, Inc. (ELS) and MHC Financing Limited Partnership Two (MHC) are the owners and operators of the Park (collectively, Defendants).[4]

This litigation is closely tied to the proceedings in two lawsuits between MHC and the City of Santee (the City). Those lawsuits have been the subject of two previous opinions by this court. (*MHC Financing Limited Partnership Two v. City of Santee* (2005) 125 Cal.App.4th 1372, 1399 (hereafter *MHC I*); *MHC Financing Limited Partnership Two v. City of Santee* (2010) 182 Cal.App.4th 1169, mod. 183 Cal.App.4th 544b (opn. certified for partial publication) (hereafter *MHC II*).)[5] As we did in *MHC II*, we begin by explaining the rent control ordinances at issue here, and then set forth the procedural history of the two lawsuits between MHC and the City.[6]

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4 Defendants' briefing does not address the corporate relationship, if any, between MHC and ELS. At most, Defendants explain that "[i]n 2004, Respondent changed its name from Manufactured Home Communities, Inc. to Equity LifeStyle Properties, Inc." In response to allegations in the operative complaint that MHC owns the Park and ELS manages and operates it, Defendants' answer admitted that MHC owns the Park, but denied that ELS manages and operates it.

5 *MHC II* was certified for partial publication. (*MHC II*, *supra*, 182 Cal.App.4th 1169.) To the extent the nonpublished portion is relevant here, it will be cited hereafter as *MHC Financing Limited Partnership Two v. City of Santee* (Mar. 15, 2010, D053345) (nonpublished portion of partially published opn., as modified Apr. 9, 2010) (hereafter *MHC II* [nonpub. portion]).

6 Defendants and Homeowners both filed requests that we take judicial notice of various court filings in other litigation. Because we do not consider those documents necessary to the disposition of this appeal, we deny the requests. (See *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6

A. *The City's Rent Control Ordinances*

As we explained in *MHC II*, *supra*, 182 Cal.App.4th 1169, 1172-1173, "[p]rior to November 27, 1998, the City's municipal code regulated the rents charged by mobilehome park owners through ordinance No. 324, as amended by ordinance No. 329 [(collectively, ordinance No. 324/329)].

"In 1998 a member of a group of mobilehome owners, acting under Elections Code section 9201 et seq., submitted to the City an initiative petition for a new mobilehome rent control ordinance. [Citation.] Less than a month later, another member submitted a modified version of the initiative. [Citation.] After a petition containing the modified initiative was circulated and signed by more than 10 percent of the City's registered voters, the city council chose, pursuant to Elections Code section 9215, to adopt the proposed ordinance, which was codified as ordinance No. 381 and became effective on November 27, 1998. [Citation.] However, the city council inadvertently adopted the form of the ordinance proposed in the *original* initiative instead of the form of the ordinance proposed in the *modified* initiative. [Citation.]

"In January 2001, after becoming aware of the error, the city council enacted ordinance No. 412, which stated that the text of ordinance No. 381 was corrected to contain the text of the ordinance set forth in the modified initiative circulated in 1998, and that the correction was made retroactive to the effective date of ordinance No. 381. [Citation.] The City began enforcing ordinance No. 412 on February 23, 2001.

[declining to take judicial notice of materials that are not "necessary, helpful, or relevant"].)

[Citation.]" (*MHC II*, *supra*, 182 Cal.App.4th at pp. 1172-1173, citing *MHC I*, *supra*, 125 Cal.App.4th at pp. 1377-1379.)

B. *The MHC Action*

As we further explained in *MHC II*, *supra*, 182 Cal.App.4th at page 1173, "MHC filed a lawsuit against the City (the MHC Action). The MHC Action asserted, among other things, (1) a claim that the City had violated the Elections Code due to the city council's mistake in adopting the wrong text for ordinance No. 381 and attempting to correct the error by enacting ordinance No. 412; and (2) a claim that certain provisions of ordinance No. 381 and ordinance No. 412 violated MHC's right to petition the government for a redress of grievances as guaranteed by article I, section 3, subdivision (a) of the California Constitution." Among other things, the MHC Action also sought a ruling that certain provisions of ordinance No. 381 and ordinance No. 412 were preempted by the MRL. (See *MHC I*, *supra*, 125 Cal.App.4th at p. 1380.)

"On June 6, 2003, the trial court ruled, among other things, that ordinance No. 381 and ordinance No. 412 were void because the City had not complied with the Elections Code, and that certain provisions of the ordinances . . . violated MHC's right to petition under the California Constitution" (*MHC II*, *supra*, 182 Cal.App.4th at p. 1173), and it "permanently enjoined the City from enforcing either of them" (*MHC I*, *supra*, 125 Cal.App.4th at p. 1380).[7]

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[7] The trial court also ruled that the MRL preempted certain provisions in ordinance Nos. 381 and 412. (*MHC I*, *supra*, 125 Cal.App.4th at p. 1380.)

The trial court addressed the remedy for the City's violation of the Elections Code with the following statement:

> "The remedy of future rent increases, as opposed to an award of damages, will adequately compensate MHC. This remedy will place the cost of compensating MHC on those tenants who benefited from the invalid rent control ordinance. California courts have routinely fashioned remedies in the form of compensating those who have wrongfully benefited from an unconstitutional statute[8] or those who have been wrongfully damaged by an illegal charge. . . . Perhaps most similar to the instant situation is *Kavanau v. Santa Monica Rent Control* [*Bd.*] (1997) 16 Cal.4th 761 [(*Kavanau*)], wherein the Supreme Court concluded the remedy of future rent increases was sufficient to compensate the plaintiff who suffered damage as the result of an unconstitutional rent control ordinance. The Court reasoned the remedy of future rent increases, as opposed to damages against the Rent Board, would place the cost of compensating the plaintiff on those tenants who benefited from the unconstitutionally low rents. . . . Despite the fact that *Kavanau* dealt with a due process violation, and the action herein deals with the initiative process, the same rationale should apply in fashioning the remedy in that the [*sic*] MHC should be compensated by those who benefited from the invalid rent control ordinance." (Citations omitted.)

The City appealed the ruling declaring ordinance No. 381 and ordinance No. 412 to be void because of noncompliance with the Elections Code. In January 2005, in *MHC I*, we reversed that portion of the trial court's ruling, concluding that "the city

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8 As we observed in *MHC I*: "Presumably the court either meant to say that California courts have fashioned remedies in the form of compensating those who have been wrongfully *harmed* by an unconstitutional statute, or that courts have fashioned remedies in the form of exacting disgorgement or restitution from those who have wrongfully benefited from an unconstitutional statute." (*MHC I, supra*, 125 Cal.App.4th at p. 1380, fn. 6.)

council properly enacted Ordinance 412 and made it retroactively effective to cure the defects in Ordinance 381." (*MHC I*, *supra*, 125 Cal.App.4th at p. 1381.)[9]

C. *The City's and MHC's Responses to the Trial Court's Ruling in the MHC Action*

"In September 2003, after the trial court in the MHC Action ruled that ordinance No. 381 and ordinance No. 412 were void, the City sent a notice to mobilehome park owners, including MHC, stating that the annual permissive rent adjustment for 2004 should be calculated based upon the former mobilehome rent control provision, [ordinance No.] 324/329, which allowed an adjustment of 100 percent of the San Diego consumer price index (CPI), instead of 70 percent of the CPI as would have been permitted by ordinance Nos. 381 and 412."[10] (*MHC II*, *supra*, 182 Cal.App.4th at p. 1176.) "The notice stated that '[i]f the appellate court reverses the trial court's decision,

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9 We remanded with instructions for the trial court to determine "(1) whether MHC suffered any legally remediable injury as a result of any differences between Ordinance 412 and Ordinance 381 and the retroactive application of Ordinance 412 to the effective date of Ordinance 381; (2) whether MHC suffered any legally remediable injury as a result of enforcement of any of the provisions in Ordinances 381 and 412 that the court found to be unconstitutional; and (3) the proper remedy for any such injury." (*MHC I*, *supra*, 125 Cal.App.4th at p. 1399.) Our opinion in *MHC II*, *supra*, 182 Cal.App.4th 1169, 1189, affirmed the trial court's post-remand ruling that MHC did not suffer any legally remediable damages.

10 More specifically, ordinance No. 324/329 allowed annual permissive rent increases equal to 100 percent of the increase in the CPI whenever the rate of change was 5 percent or less, plus 70 percent of the portion of the CPI increase which is greater than 5 percent (ordinance No. 324/329, § 2.44.100(C)(1)). Ordinance Nos. 381 and 412 allowed annual permissive rent increases equal to 70 percent of the increase in the CPI where the increase is 3 percent or less, plus 40 percent of the portion of the CPI increase that is greater than 3 percent but less than 8 percent. (Ordinance Nos. 381 & 412, § 2.44.100(C)(1).)

the [City] reserves its right to recoup and refund to tenants the difference between the one hundred percent of the average rate change in the [CPI] and the annual permissive adjustment permitted under [ordinance Nos. 381 and 412].'" (*MHC II*, *supra*, 182 Cal.App.4th at p. 1176.)

The Park's tenants then received a notice on the letterhead of "Manufactured Home Communities, Inc." (now apparently known as ELS) advising them that not only would MHC implement the permissive annual rent adjustment allowed by the City, but that effective January 1, 2004, (1) mobilehome park tenants would incur a one-time charge, representing "the additional rent that would have been collected pursuant to [ordinance No.] 324/329 for the period November 2000[11] to the effective date [of the trial court's judgment in the MHC Action] if those Ordinances had been in effect"; and (2) the base rent at the Park would increase , representing "the base rent which would have existed had [ordinance No.] 324/329 . . . been effective and enforced instead of [ordinances] Nos. 381[and] 412."

D. *The City of Santee Action*

"After MHC rejected a request by the City that it rescind its notice of the rent increases, the City filed a lawsuit against MHC in December 2003 to enjoin it from

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11 Although ordinance No. 381 became effective on November 27, 1998, MHC apparently selected the date of November 2000 because, as the June 6, 2003 order in the MHC Action explained, "It is undisputed MHC did not file its government tort claim until July 26, 2001. The claim states MHC has incurred damages from November [2000] to the present time. Accordingly, MHC's request for damages based on the rent differential between [ordinance No.] 324/329 and [o]rdinance Nos. 381 and 412 is limited to November 2000 to the present time . . . ."

collecting any rent increase other than the annual permissive rent adjustment for 2004 (the City of Santee Action). The trial court denied the City's request for a preliminary injunction, and MHC implemented the two-part rent increase described in its notice to the Park's tenants.

"In December 2005, after we reversed the trial court's ruling in the MHC Action and thereby established that ordinance No. 412 was retroactively effective to the date of the enactment of ordinance No. 381, [citation], the City amended its complaint to include causes of action for (1) 'Recovery of Amount Paid on Reversed Judgment,' [(fourth cause of action)] and (2) an accounting of the rents received from the Park's tenants in 2004 and 2005 [(fifth cause of action]). . . . On behalf of the Park's tenants, the City sought an order requiring MHC to pay restitution of all of the monies it collected from the tenants following the trial court's ruling that ordinance Nos. 381 and 412 were void, including (1) the difference between the permissive annual rate adjustment allowed by [ordinance No.] 324/329 and the permissive annual increase allowed by ordinance No. 412; and (2) the base rent increase and one-time payment that MHC implemented in January 2004." (*MHC II*, *supra*, 182 Cal.App.4th at pp. 1176-1177, fn. omitted, citing *MHC I*, *supra*, 125 Cal.App.4th at p. 1372.) The City then moved for summary adjudication on the fourth and fifth causes of action, and the trial court granted the motion. (*Id.* at p. 1179.)

1. *The Stipulated Judgment in the City of Santee Action*

The City and MHC entered into a stipulated judgment to resolve the remaining issues between them, and the trial court entered the judgment on November 5, 2008

(hereafter, Stipulated Judgment). (*MHC II*, *supra*, 182 Cal.App.4th at p. 1179.) Among other things, the Stipulated Judgment resolved the *amount* of restitution MHC was required to pay to the Park's tenants pursuant to the trial court's summary adjudication in favor of the City on its fourth and fifth causes of action for "Recovery of Amount Paid on Reversed Judgment" and an accounting. Specifically, the Stipulated Judgment stated that "[w]ith respect to the City's Fourth and Fifth Causes of Action," MHC and the City had agreed that MHC would make certain payments to the Park's tenants under certain conditions.

First, with respect to the one-time charges imposed by MHC in 2004, MHC agreed to pay $433,561.50 to those tenants of the Park who paid the charges. The amount of $433,561.50 represented all of the one-time charges plus interest. The payment was to be made within 14 days of entry of the Stipulated Judgment.

Second, with respect to the elevated base rents collected by MHC, the Stipulated Judgment stated:

> "MHC shall deposit $692,929.50, representing the difference between the base rents that MHC has collected since 2004 (which presuppose that [ordinance No.] 324/329 was in effect from 2001 forward), and the base rents that the City contends should have been charged (which presupposes that Ordinance 412 was in effect between 2001 and June 6, 2003), between 2004 and October 2008 ('Disputed Rent Differential'), into a Court-administered bank account. This amount is based upon the City's enforcement of the CPI adjustments in [ordinance No.] 324/329 between June 2003 and December 2005. . . . In total MHC shall deposit $775,773.61 into a Court-administered bank account, which shall reflect the Disputed Rent Differential together with the interest thereon."

Third, because the parties contemplated that portions of the Stipulated Judgment would be appealed, the parties agreed that MHC would continue to calculate rents using

the existing base rents that it was charging, which included the base rent increase that occurred at the beginning of 2004 on the assumption that ordinance No. 324/329 had been applicable since November 2000, but that the disputed differential would be placed into a court-administered account.[12] Specifically, the Stipulated Judgment provided: "During the pendency of the appeal of this Judgment, MHC shall continue to use the existing base rents in calculating the adjustments to base rent that the City permits pursuant to its rent control ordinance. However, on or before the 15th of each month, commencing in November 2008, MHC shall deposit the Disputed Rent Differential from the previous calendar month actually received from the tenants into the Court-administered bank account . . . ."

Fourth, contemplating an appeal, the parties agreed: "At the conclusion of the appeal, if this Judgment is affirmed, the Court shall disburse the funds in the Court-administered bank account to the tenants who paid the Disputed Rent Differentials . . . . [¶] . . . At the conclusion of the appeal, if any reviewing Court determines that the

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12 As set forth in the notice of the rent increase and the one-time charge sent to the Park's tenants in September 2003, "effective January 1, 2004, your base rent will increase to [specific amount depending on home site], the base rent which would have existed had [ordinance No.] 324/329 . . . been effective and enforced instead of [ordinance Nos. 381 and 412]. This increase includes the annual permissive CPI adjustment allowed by [ordinance No.] 324/329 for 2004." Thus, as a matter of logic, every year when MHC raised the rent by a certain percentage based on the permissive CPI adjustment for that year, the percentage adjustment was to a base rent that had been increased in 2004 on the assumption that ordinance No. 324/329 had been effective since November 2000. We note that the Stipulated Judgment did not provide for a permanent rollback of rents. Thus, until MHC takes action to rescind the base rent increase it imposed in January 2004, the Park's tenants will continue to be financially impacted by the January 2004 increase.

tenants are not entitled to the funds in the Court-administered bank account, the Court shall disperse said funds to MHC . . . ."

2. *MHC's Cross-complaint in the City of Santee Action*

In April 2006, MHC filed a cross-complaint in the City of Santee Action, alleging the unconstitutionality of the City's mobilehome rent control ordinances. (*MHC II*, *supra*, 182 Cal.App.4th at pp. 1177-1178.) Prior to the parties' entering into the Stipulated Judgment, the trial court granted summary judgment in favor of the City on MHC's cross-complaint. (*Id*. at p. 1179.) The Stipulated Judgment served as the judgment on the complaint and cross-complaint.

3. *The Appeal of the Stipulated Judgment*

MHC filed an appeal from the Stipulated Judgment, challenging the trial court's rulings on the City's complaint and MHC's cross-complaint. (*MHC II*, *supra*, 182 Cal.App.4th at pp. 1179-1180.)

The only issue that MHC raised on appeal with respect to the City's complaint was a challenge to the trial court's order that the City could obtain restitution and an accounting on behalf of the Park's tenants. In the nonpublished portion of *MHC II*, we reversed the trial court's summary adjudication in favor of the City on the fourth and fifth causes of action for restitution and an accounting. (*MHC II* [nonpub. portion], *supra*, pp. 44-47.) We concluded that the City lacked standing to seek restitution on behalf of a third party (i.e. the Park's tenants) who paid money in reliance on a judgment that was later reversed.

With respect to MHC's appeal of the summary adjudication of its cross-complaint, we affirmed the trial court's ruling.

Accordingly, we reversed the Stipulated Judgment insofar as it incorporated the trial court's ruling that the Park's tenants were entitled to restitution under the fourth and fifth causes of action in the City's amended cross-complaint. In all other respects, we affirmed the Stipulated Judgment.

E. *Homeowners' Action Against Defendants*

1. *Allegations of the Original Complaint*

In February 2004, shortly after MHC implemented the one-time charge and base rent increase, Homeowners filed a proposed class action complaint against Defendants, containing four causes of action.

The first cause of action alleged that Defendants violated ordinance No. 324/329 by imposing the base rent increase and one-time charge. Homeowners sought treble damages from Defendants under the terms of ordinance No. 324/329[13] and punitive damages.

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13 Ordinance No. 324/329, section 2.44.190 (B) provides in relevant part: "The city or manufactured home residents thereof, or manufactured home park owners thereof, may seek relief from the appropriate court to restrain or enjoin any violation of this chapter or the rules and regulations or decisions of the commission. [¶] In addition, any person who demands, accepts, or retains any payment in violation of any provision of this chapter shall be liable in a civil action to the person from whom such payment is demanded, accepted, or retained for damages in the sum of three times the amount by which the payment or payments demanded, accepted or retained exceed the maximum rent which could lawfully be demanded, accepted, or retained, together with reasonable attorneys' fees and costs as determined by the court."

The second cause of action alleged violations of the MRL. Specifically, Homeowners alleged that by imposing the one-time charge and the increased base rent, Defendants violated section 798.31, which provides in part: "A homeowner shall not be charged a fee for other than rent, utilities, and incidental reasonable charges for services actually rendered." (*Ibid*.)[14] As a remedy, Homeowners sought recovery of their damages, as well as punitive damages, statutory damages of $2,000 for each willful violation pursuant to section 798.86, and recovery of their attorney fees and costs pursuant to section 798.85.

The third cause of action alleged a violation of the unfair competition law, Business and Professions Code section 17200 et seq. (the UCL), premised on Defendants' alleged unlawful and unfair practice of imposing the one-time charge and base rent increase. Homeowners sought the remedy of injunctive relief, as well as rescission and disgorgement of the allegedly unlawful charges.

The fourth cause of action sought declaratory relief regarding the parties' rights and duties under ordinance No. 324/329, the MRL and the UCL.

2. *Proceedings Under the Original and First Amended Complaint*

The trial court entered an order certifying the action as a class action in March 2005.

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[14] The original complaint cited only the one-time charge as a violation of section 798.31. However, the first amended complaint alleged that both the one-time charge *and* the monthly rent increase violated that statute. As we will explain, the trial court granted judgment on the pleadings on the second cause of action as pled in the first amended complaint.

In June 2006, Defendants moved for summary judgment on the ground that the one-time charge and increased base rents were legally permissible in that Defendants had "a minimum constitutional right to a fair return measured by the rents [they] would have received under [ordinance No.] 324/329." In denying the motion, the trial court cited our opinion in *MHC I*. The trial court explained, "The Court of Appeal found Ordinance 412 to be constitutional for the most part, and specifically ordered it was retroactive to the time Ordinance 381 was enacted. Therefore, at the time MHC issued the . . . re-assessment, Ordinance 412 was the applicable provision, not Ordinance 329. For purposes of this motion, MHC has not met its burden of showing the assessment was valid."[15]

After the trial court indicated that ordinance No. 412 was applicable at the time Defendants imposed the one-time charge and base rent increase, Homeowners brought a motion for leave to amend their complaint to allege that Defendants violated ordinance No. 412 as well. The trial court granted the motion, and Homeowners filed a first amended complaint.

MHC filed a motion to strike the prayer for punitive damages from the first amended complaint, and the trial court granted the motion without leave to amend. It

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15 We note that our statement regarding retroactivity in *MHC I* concerned the retroactive application of ordinance No. 412 to the enactment date of ordinance No. 381 (i.e., the period between November 1998 and January 2001). (*MHC I*, *supra*, 125 Cal.App.4th at pp. 1378-1379, 1381, 1387.) We did not have before us the issue of whether ordinance No. 412 should be made retroactively applicable to 2004 and 2005 by virtue of our reversal of the trial court's permanent injunction against ordinance No. 412.

explained, "I don't think there's sufficient pleadings to indicate there's malice, oppression or fraud."

MHC also moved for judgment on the first amended complaint's second cause of action, which alleged that Defendants violated the MRL (§ 798.31). Defendants argued that they could not have violated section 798.31 by imposing "a fee for *other* than rent" (§ 798.31, italics added), because the one-time charge and increased base rent were properly classified as a type of rent. The trial court granted the motion.

3. *The Second Amended Complaint*

After obtaining leave from the trial court, Plaintiffs filed the operative second amended complaint, which alleged two additional statutory bases for an award of treble damages.

First, Homeowners amended the first cause of action (for violation of ordinance No. 324/329 and ordinance No. 412) to seek treble damages under section 1947.11, which provides in part:

> "In any city, county, or city and county which administers a system of controls on the price at which residential rental units may be offered for rent or lease and which requires the registration of rents, upon the establishment of a certified rent level, any owner who charges rent to a tenant in excess of the certified lawful rent ceiling shall refund the excess rent to the tenant upon demand. If the owner refuses to refund the excess rent and if a court determines that the owner willfully or intentionally charged the tenant rent in excess of the certified lawful rent ceiling, the court shall award the tenant a judgment for the excess amount of rent and may treble that amount. The prevailing party shall be awarded attorney's fees and court costs." (§ 1947.11, subd. (a).)

Second, Homeowners amended the third cause of action (for violation of the UCL) to seek penalties under section 3345, which provides for treble damages in certain

instances when an action is brought by or on behalf of senior citizens "to redress unfair or deceptive acts or practices or unfair methods of competition." (*Id*., subd. (a).)

The trial court denied Defendants' motion to strike these new allegations from the second amended complaint, and Defendants then filed an answer followed by a motion for judgment on the pleadings.

4. *The Trial Court Grants the Motion for Judgment on the Pleadings on the Ground of Mootness Due to the Stipulated Judgment in the City of Santee Action*

The sole argument advanced in Defendants' motion for judgment on the pleadings was that Homeowners' claims would be moot and Homeowners would cease to have suffered any remediable injury when the Stipulated Judgment was entered in the City of Santee Action.[16] Defendants argued that because the Stipulated Judgment "provides for the repayment of the one-time charge, the base rent and assessment to [Park] residents, [Homeowners] have no injury and no basis upon which to seek punitive and statutory damages."

The trial court granted the motion for judgment on the pleadings and entered judgment, stating that "[Homeowners'] entire Second Amended Complaint is dismissed as moot without leave to amend."

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16 At the time the motion was filed, the Stipulated Judgment had not yet been entered by the trial court in the City of Santee Action, but was in draft form. One day before the trial court's ruling on the motion for judgment on the pleadings in this action, the Stipulated Judgment was entered in the City of Santee Action. The close coordination in dates is no doubt due to the fact that Judge Sturgeon presided over both the City of Santee Action and this action.

Homeowners appeal from the judgment, challenging (1) the ruling granting judgment on the pleadings on the entirety of the second amended complaint; (2) the ruling granting judgment on the pleadings on second cause of action (violation of the MRL) as pled in the first amended complaint; and (3) the ruling striking the prayer for punitive damages.

II

DISCUSSION

A. *Motion for Judgment on the Pleadings on the Ground of Mootness*

We first consider Homeowners' contention that the trial court erred in granting judgment on the pleadings on the second amended complaint on the ground of mootness.

1. *Standard of Review*

We apply a de novo standard of review in an appeal from a ruling on a motion for judgment on the pleadings. (*Wise v. Pacific Gas & Electric Co.* (2005) 132 Cal.App.4th 725, 738 ["A motion for judgment on the pleadings is akin to a general demurrer; it tests the sufficiency of the complaint to state a cause of action. [Citation.] The court must assume the truth of all factual allegations in the complaint, along with matters subject to judicial notice. [Citation.] Appellate courts review judgments on the pleadings de novo."].)[17]

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17 MHC contends that we should apply the substantial evidence standard when reviewing the trial court's grant of judgment on the pleadings because it concerns the issue of mootness. We disagree. The case law on which this argument is premised reviewed mootness determinations made by the trial court based on evidence presented at trial. (*Giraldo v. California Department of Corrections & Rehabilitation* (2008) 168

2. *Impact of Our Opinion in MHC II*

Before we turn to the merits of the trial court's ruling, we pause to consider the recent proceedings in the City of Santee Action concerning the Stipulated Judgment, and their impact, if any, on the issues presented here.

As we have explained, during the pendency of this appeal, we issued our opinion in *MHC II*, *supra*, 182 Cal.App.4th 1169, in which we reversed the trial court's ruling in the City of Santee Action granting summary adjudication on the City's causes of action for restitution and an accounting on behalf of the Park's tenants. (*Id.* at p. 1189.) Those causes of action formed the basis for the Stipulated Judgment's provisions requiring MHC to pay money into a court-administered bank account for possible future distribution to the Park's tenants "if this [Stipulated] Judgment is affirmed."

We requested that the parties provide us with supplemental briefing on the impact of our decision in *MHC II*, *supra*, 182 Cal.App.4th 1169, on the issues raised in this appeal. Despite our reversal of the ruling granting judgment on the pleadings on the causes of action for restitution and an accounting, both Homeowners and Defendants took the position that the Stipulated Judgment had been *affirmed.* Both sides agreed that under the terms of the Stipulated Judgment, the funds from the court-administered

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Cal.App.4th 231, 257 [dismissal of cause of action as moot based on evidence at trial], citing *Boccato v. City of Hermosa Beach* (1984) 158 Cal.App.3d 804, 808 [mootness determination following an evidentiary hearing for an injunction].) Here, the mootness issue was raised in a motion for judgment on the pleadings, and we accordingly apply the de novo standard of review applicable to the review of a ruling on such a motion.

account should thus be distributed to the Park's tenants when our opinion becomes final.[18]

Defendants stated, "Subject to the outcome of its rehearing petition, MHC agrees with [Homeowners] . . . that under [*MHC II*, *supra*, 182 Cal.App.4th 1169], the rents that MHC has paid into escrow in accordance with the Stipulated Judgment in the City of Santee Action ($775,773.61 plus the rents that have been escrowed during MHC's appeal) must be disbursed to the tenants."

As the issue is not before us, we take no position on the parties' interpretation of the Stipulated Judgment to require disbursement of funds to the Park's tenants following our decision in *MHC II*, *supra*, 182 Cal.App.4th 1169, reversing the trial court's ruling granting summary adjudication on the cause of action for restitution and an accounting.

For the purposes of our analysis here, the important fact is that although the parties claim that the Park's tenants will eventually receive payment as a result of the Stipulated Judgment, there is no evidence in the appellate record that such payment has occurred.

3. *The Trial Court Erred in Ruling That Homeowners' Claims Are Moot*

Homeowners present numerous arguments challenging the trial court's ruling that all of the injuries the Park's tenants claimed to have suffered have been compensated by the Stipulated Judgment, and that the second amended complaint is therefore moot. We

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18 MHC filed a petition for review of our opinion in *MHC II*, *supra*, 182 Cal.App.4th 1169, on April 27, 2010 (case No. S182192). On June 17, 2010, the petition for review was denied.

find one of those arguments to be dispositive, and therefore do not, and need not, reach the others.[19]

Homeowners argue that the entry of the Stipulated Judgment did not moot the second amended complaint because "[t]he mere *entry* of the Stipulated Judgment does not require MHC to repay the monthly space rent increase . . . . Instead repayment is expressly conditioned upon the outcome of an appeal challenging the Stipulated Judgment itself. And if this court reverses the restitution award, the Stipulated Judgment provides for the return of these monies to MHC. In other words, MHC's duty to repay the monthly space rent increase is subject to an express condition precedent . . . ." We agree.

The Stipulated Judgment did not guarantee that the Park's tenants would be compensated for the injuries alleged in the second amended complaint. Instead, that compensation would occur, if ever, after the resolution of an appeal that the Stipulated Judgment expressly contemplated. When it granted judgment on the pleadings in favor of Defendants, the trial court had no evidence before it to establish that the Park's tenants would, without a doubt, recover for the damage allegedly caused by MHC's imposition of the January 2004 base rent increase. The trial court, thus, had no basis for ruling that the

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19 Principally, Homeowners argue (1) that even if the Park's tenants receive the payment provided by the Stipulated Judgment, they will not be fully compensated for the injuries alleged in the second amended complaint, due in part to the absence of permanent rent-rollback; and (2) the Park's tenants have not been fully compensated by the Stipulated Judgment because the amounts to be paid are based on the assumption that ordinance No. 324/329 applied in 2004 and 2005, rather than ordinance No. 412. We need not, and do not, rule on the merits of those arguments.

Park's tenants had been made whole for their injuries as alleged in the second amended complaint.

Because the payments provided for in the Stipulated Judgment were not a certainty — and were expressly subject to the outcome of a contemplated appeal — Defendants were wrong when they stated to the trial court that "[o]nce the Stipulated Judgment is *entered*, [Homeowners] will have no injury and no real damage claim left to pursue." (Italics added.) Because nothing in the record before the trial court established that the Park's tenants had been or would be compensated, the trial court erred in entering judgment against Homeowners on the ground that the second amended complaint was moot.

The parties appear to agree that the Park's tenants will *eventually* be compensated as provided for in the Stipulated Judgment. However, evidence of that compensation is necessary to support a motion for mootness. When and if compensation is paid to the Park's tenants, Defendants may once again pursue the issue of mootness in the trial court. However, in ruling on any mootness argument asserted by MHC, the trial court will have to address Homeowners' arguments, among others, that the Stipulated Judgment does not provide for an ongoing rollback of rents as sought by the second amended complaint (see fn. 12, *ante*), and that the Park's tenants continue to be financially impacted by the

absence of a rent rollback to undo the increase in base rent implemented by MHC in January 2004.[20]

B. *The Trial Court Properly Granted Judgment on the Pleadings on the Cause of Action for Violation of the MRL*

We next consider the trial court's ruling granting judgment on the pleadings on the cause of action alleging that Defendants violated the MRL, specifically section 798.31, by imposing the one-time charge and base rent increase in 2004.

1. *The Charges Imposed by MHC Were Rent Because They Were Compensation for the Use of Land*

Section 798.31, which is applicable to mobilehome park owners and their agents, provides in part that "[a] homeowner shall not be charged a fee for other than rent, utilities, and incidental reasonable charges for services actually rendered." (§ 798.31; see also *id*., § 798.2.)[21] In their motion, Defendants argued that section 798.31 did not apply here because the one-time charge and base rent increase were not "a fee for *other* than rent" (*ibid*, italics added), but instead were properly classified as *rent*. The trial court agreed that the charges were rent, and it therefore granted Defendants' motion.

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20 Further, as we need not, and do not, address any of the other arguments that Homeowners assert as to why the Stipulated Judgment does not cause the second amended complaint to be moot — including, among others, entitlement to attorney fees and statutory penalties — Homeowners may also present those arguments to the trial court in response to any mootness argument asserted by MHC.

21 "[T]he [MRL] does not restrict the amount of rent that a mobilehome park owner may charge park residents; it is not a rent control law." (*Cacho v. Boudreau* (2007) 40 Cal.4th 341, 350 (*Cacho*).)

In determining whether the charges imposed by MHC are rent, we begin with the meaning of the term "rent" in the MRL. As our Supreme Court has explained, in the absence of a specific statutory definition in the MRL, "the Legislature intended that 'rent' would have its ordinary meaning, which is compensation for the use of land . . . and the means by which landlords make a profit on their property." (*Cacho*, *supra*, 40 Cal.4th at p. 349, citation omitted; see also *Vance v. Villa Park Mobilehome Estates* (1995) 36 Cal.App.4th 698, 707 [although not defined in the MRL,"[r]ent is 'the consideration paid by the tenant for the use, possession, and enjoyment of the demised premises'"].)

Applying this definition, the one-time charge and the base rent increase are properly classified as rents. As MHC explained to the Park's tenants in the notices imposing the one-time charge and the base rent increase, MHC was imposing those charges because they represented the amount payable *for occupancy of the applicable home site* if ordinance No. 324/329 had been enforced since November 2000. Because the charges imposed by MHC were for the Park tenants' occupation of the home sites, the one-time charge and the base rent increase were "compensation for the use of land" and thus qualify as "rent." (*Cacho*, *supra*, 40 Cal.4th at p. 349.)

2. *Case Law Does Not Establish That Only "Otherwise Lawful" Charges Are Rent*

Homeowners argue, however, that only "'otherwise lawful'" fees may be classified as rent. In a somewhat circular argument, they contend that because their lawsuit alleges that the one-time charge and increased base rents were illegally imposed, they cannot properly be considered "rent."

As support for this argument, Homeowners rely on a phrase appearing in *Cacho*. In discussing whether property taxes that park owners passed through to their tenants were "rent" under section 798.31, *Cacho* stated, "Although the passthrough mandated by subdivision (a) of section 798.49 does not include property taxes, it is nonetheless significant in determining the meaning of the term 'rent' in section 798.31, and, more specifically whether rent includes *otherwise lawful* passthroughs of business expenses like property taxes." (*Cacho*, *supra*, 40 Cal.4th at p. 352, italics added.) Homeowners argue that "[t]he inclusion of the phrase 'otherwise lawful' is significant: it confirms . . . that rent under the MRL includes only otherwise lawful fees."

However, in using the phrase "otherwise lawful," *Cacho* was not indicating that a charge is considered rent for the purposes of section 798.31 only if it is a *lawful* charge. Instead, immediately before the sentence at issue, *Cacho* explained that the MRL states in section 798.49 that a local agency is required to allow a park owner to pass through specific government fees and assessments to the park residents, but also states that those fees and assessments do not include property taxes. (§ 798.49.)[22] *Cacho* clarified that

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22 Section 798.49, subdivision (a) provides: "Except as provided in subdivision (d), the local agency of any city, including a charter city, county, or city and county, which administers an ordinance, rule, regulation, or initiative measure that establishes a maximum amount that management may charge a tenant for rent shall permit the management to separately charge a homeowner for any of the following: [¶] (1) The amount of any fee, assessment or other charge first imposed by a city, including a charter city, a county, a city and county, the state, or the federal government on or after January 1, 1995, upon the space rented by the homeowner. [¶] (2) The amount of any increase on or after January 1, 1995, in an existing fee, assessment or other charge imposed by any governmental entity upon the space rented by the homeowner. [¶] (3) The amount of any fee, assessment or other charge upon the space first imposed or

although property taxes are excluded from section 798.49, this "means only that local rent control agencies are not *required* to allow park owners to separately charge park residents for property taxes; it does not mean that local rent control agencies are *prohibited* from doing so." (*Cacho, supra*, 40 Cal.4th at p. 351.)

Cacho then made the statement at issue here: "Although the passthrough mandated by subdivision (a) of section 798.49 does not include property taxes, it is nonetheless significant in determining the meaning of the term 'rent' in section 798.31, and, more specifically whether rent includes *otherwise lawful* passthroughs of business expenses like property taxes." (*Cacho*, *supra*, 40 Cal.4th at p. 352, italics added.)

Put in proper context, the sentence has nothing to do with whether a charge imposed by a park owner should be classified as "rent" under section 798.31 only if it is "otherwise lawful." (*Cacho, supra*, 40 Cal.4th at pp. 352-353.) Instead, the sentence appears to be nothing more than an observation that because section 798.49 does not *prohibit* a park owner from passing through property taxes to its tenants, the passthrough of property taxes at issue in *Cacho* was "otherwise lawful" under the MRL. (*Cacho*, at p. 352.) *Cacho* accordingly does not support Homeowners' argument.

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increased on or after January 1, 1993, pursuant to any state or locally mandated program relating to housing contained in the Health and Safety Code." Civil Code section 798.49, subdivision (d) provides: "This section shall not apply to [¶] . . . [¶] (4) Any tax imposed upon the property by a city, including a charter city, county, or city and county."

3. *Regardless of Whether MHC Was Required to Obtain a Kavanau Adjustment, the Charges Are Properly Classified as Rent*

Homeowners also argue that the charges imposed by MHC should not be considered "rent" under section 798.31 because MHC did not follow the procedures set forth in *Kavanau, supra,* 16 Cal.4th at pages 783-784. *Kavanau* describes a procedure in which damages for a violation of a landlord's constitutional right to a fair return on its property are established by a hearing before the relevant local rent control agency, in which future rent ceilings may be set by taking into account the past confiscatory rents. (*Ibid.*) Homeowners contend that because the trial court in the MHC Action stated that the award of damages through future rent increases was most analogous to the procedure described in *Kavanau,* MHC was required to follow that procedure here.

We need not decide whether MHC was required to follow *Kavanau* by applying to the City for a rent adjustment prior to implementing the one-time charge and increased base rent. Regardless of whether MHC followed the proper procedure, it is undisputed that MHC imposed the charges based on what it believed it was owed for the tenant's occupation of the Park's home sites under the ordinances that the trial court ruled were applicable. The charges are accordingly "rent" as defined by our Supreme Court in *Cacho.* (*Cacho, supra,* 40 Cal.4th at p. 349.)[23]

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23 Homeowners also argue that because the charges were awarded as damages by the trial court, they should be classified as "damages" rather than as "rent." The fallacy in this argument, however, is that the two terms are not mutually exclusive. The trial court ruled that MHC could recover its *damages* by implementing a future *rent* increase. Thus, although the charges imposed by MHC were damages awarded by the trial court, they also were "rent" as the term is used in section 798.31.

4. *The Trial Court's Ruling in the MHC Action Does Not Create Collateral Estoppel on the Issue of Whether the MRL Provides a Remedy for the Payment of Excessive Rent*

Finally, Homeowners argue that under principles of collateral estoppel, MHC is bound by a ruling by the trial court in the MHC Action, in which that court ruled that the MRL preempts the treble damages provision in section 2.44.190B of ordinance Nos. 381 and 412 for a party suing to recover the payment of excess rent.[24] According to Homeowners, because the trial court found that the MRL preempted part of the damages remedy in ordinance Nos. 381 and 412 for a party seeking to recover excessive rent payments, the trial court must necessarily have believed that the MRL provides a remedy for the excessive rent payments.[25] Homeowners contend that MHC, as a party to the MHC Action, is bound by the trial court's ruling in the MHC Action, and may not dispute Homeowners' allegation that the MRL provides a remedy for the payment of excessive rents.

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[24] Section 2.44.190B of ordinance Nos. 381 and 412 provides in part: "[A]ny person who demands, accepts, or retains any payment in violation of any provision of this chapter shall be liable in a civil action to the person from whom such payment is demanded, accepted, or retained for damages in the sum of three times the amount by which the payment or payments demanded, accepted, or retained exceed the maximum rent which could lawfully be demanded, accepted, or retained, together with reasonable attorneys' fees and costs as determined by the court."

[25] Homeowners contend that we "affirmed" this ruling in *MHC I*, *supra*, 125 Cal.App.4th 1372. However, in the appeal that we decided in *MHC I*, the City did not challenge the trial court's preemption ruling, and the issue was accordingly not before us. (*MHC I*, at p. 1391 ["none of the rulings in parts 3 through 7 of the court's decision were challenged on appeal"].)

We reject Homeowners' attempt to use the trial court's ruling in the MHC Action to create a binding principle of law in this case. Without even addressing whether all of the requirements of collateral estoppel apply here (see *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341), we reject Homeowners' argument because the trial court in the MHC Action did not rule on the issue of whether section 798.31 of the MRL provides a remedy when a park owner charges excessive rent. Instead, the trial court's ruling expressly concerned only the preemption of the treble damages provision in the City's ordinances. Although Homeowners contend that the trial court's ruling *implied* a view on whether the MRL provides a cause of action for the recovery of excessive rents, the issue was nevertheless *not* presented and *not* ruled on. Accordingly, the issue was not "actually litigated in the former proceeding" as required for the application of collateral estoppel. (*Lucido*, at p. 341.)

In sum, we conclude that the trial court properly granted judgment on the pleadings on Homeowners' cause of action for violation of the MRL. Further, as Homeowners have identified no way in which they could amend their pleadings to state a viable cause of action under the MRL, the trial court did not abuse its discretion in denying leave to amend. (*La Jolla Village Homeowners' Assn. v. Superior Court* (1989) 212 Cal.App.3d 1131, 1141 ["a judgment on the pleadings without leave to amend should not be granted if there is a reasonable possibility that a defect in the complaint can be cured by amendment," and the "burden of proving there is a reasonable possibility the defect can be cured by amendment is on the plaintiff"]; *Ludgate Ins. Co. v. Lockheed*

Martin Corp. (2000) 82 Cal.App.4th 592, 602 ["'Denial of leave to amend after granting a motion for judgment on the pleadings is reviewed for abuse of discretion.'"].)

C. *The Trial Court Properly Granted the Motion to Strike Homeowners' Prayer for Punitive Damages*

The final issue is whether the trial court erred in striking Homeowners' prayer for punitive damages and the corresponding allegations from the first amended complaint.

In considering an appeal from a motion striking a prayer for punitive damages, we apply a de novo standard of review, assuming the truth of the factual allegations in the complaint. (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255 (*Clauson*).)

"In order to survive a motion to strike an allegation of punitive damages, the ultimate facts showing an entitlement to such relief must be pled by a plaintiff." (*Clauson*, *supra*, 67 Cal.App.4th at p. 1255.) Thus, because a plaintiff may recover punitive damages for breach of an obligation not arising from a contract if the trier of fact finds by clear and convincing evidence that the defendant was "guilty of oppression, fraud, or malice" (§ 3294, subd. (a)), to survive a motion to strike a prayer for punitive damages a complaint must plead ultimate facts showing oppression, fraud or malice. "'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (*Id.*, subd. (c)(2).) "'Fraud' means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (*Id.*, subd. (c)(3).) "'Malice' means conduct which is intended by the defendant to cause injury to the

plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (*Id.*, subd. (c)(1).)

Homeowners contend that MHC acted with malice or oppression in imposing the one-time charge and the base rent increase because it knew that it was not permitted to do so under the terms of the trial court's order in the MHC Action, but instead was required to apply to the City for a *Kavanau* adjustment. (*Kavanau*, *supra*, 16 Cal.4th at pp. 783-784.) Further, Homeowners contend that because the Parks' residents are senior citizens, "MHC perpetrated this conduct against an especially vulnerable group."

We have reviewed the allegations of the first amended complaint and conclude that it does not plead ultimate facts that would establish malice or oppression. The trial court in the MHC Action did not specify the procedure for implementing the future rent increases that it stated would compensate MHC for the injury it suffered due to the City's enforcement of ordinance Nos. 381 and 412. Although the trial court mentioned *Kavanau*, *supra*, 16 Cal.4th 761, 783-784, as a relevant precedent, it did not expressly state that MHC was required to apply to the City before retroactively applying a rent increase for the period starting November 2000. Further, although in *MHC I*, *supra*, 125 Cal.App.4th 1372, 1399, we reversed the portion of the trial court's ruling awarding MHC the remedy of future rent increases, we did not specify *how*, or *if*, the already-imposed rent increases were to be rolled back or whether the one-time charges were to be refunded. Under those circumstances, we cannot say that by engaging in the conduct alleged in the complaint, MHC acted despicably or intended to cause injury as required for a finding of malice or oppression. Accordingly, we conclude that the trial court

properly granted the motion to strike the punitive damages from the first amended complaint.[26]

DISPOSITION

The judgment is reversed, and this action is remanded to the trial court for proceedings consistent with this opinion.

IRION, J.

WE CONCUR:

BENKE, Acting P. J.

MCINTYRE, J.

26 In their appellate briefing, Homeowners also focus on MHC's alleged conduct of offering 34-year leases to the Park's tenants, which would not be controlled by the City's rent control ordinances. However, we do not view that conduct as rising to the level necessary to constitute oppression or malice. We further note that allegations concerning the 34-year leases did not appear in the causes of action in the first amended complaint for which Homeowners requested punitive damages (i.e., the first and second cause of action), but instead were only briefly mentioned in the third cause of action alleging violation of the UCL.